

REMARKS

Claims 1-14 and 16-31 are pending, with claims 3-5, 7, 9-13, 17, and 25-31 previously withdrawn from consideration.

The Examiner provisionally rejected claims 1-2, 6, 8, 14, 16, and 18-24 under the judicially created doctrine of obviousness-type double patenting in view of claims 1-37 of copending USSN 10/791,103.

However, this rejection seems inappropriate. In the present application, the Examiner issued a Restriction Requirement in which a spherical shape (claim 3) was stated as being a separate species from a particle having a shape that is substantially free of a concave region (claim 2). Applicants elected the latter species, and claim 3 remains withdrawn from consideration. Thus, it is inconsistent for the Examiner to now reject, for example, claim 2 under the judicially created doctrine of obviousness-type double patent based on the claims 1-37 in USSN 10/791,103 when these claims require generally spherical particles. However, if the Examiner re-enters non-elected claims 3-5, 7 and 17, which Applicants believe he should because these claims were withdrawn based on a species election and the generic, linking claim (claim 1) has been allowed, then Applicants will submit a terminal disclaimer relative to claims 1-37 in USSN 10/791,103.

The Examiner rejected claims 1-2, 6, 8, 14, 16, and 18-24 under 35 U.S.C. §102(b) as being anticipated by Kamiya et al., U.S. Patent No. 5,192,301 (“Kamyia”).

Claims 1-2, 6, 8, 14, 16, and 18-24 cover compositions that include a first **collection** of particles having a first shape and a second **collection** of particles having a second shape different than the first shape. Kamyia never discloses such compositions. Instead, while Kamyia discloses various embodiments of plugs (see, e.g., Kamyia Figs. 1-29), he discloses using only a single plug for his intended purpose. (See, e.g., id. col. 1, lines 11-14, col. 2, lines 37-60 and col. 8, lines 65-68.) Applicants therefore request reconsideration and withdrawal of this rejection.

The same arguments have been presented in response to the Office Action mailed November 2, 2006. In reply to Applicants' arguments, the Examiner stated in the Office Action

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mailed on April 17, 2007 that "The arguments have been found persuasive regarding rejections based on 35 USC 102 and 112 paragraph 2".

Applicants believe the application is in condition for allowance, which action is requested.

Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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